IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 32 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX
Versus
M/s. AMRAS TRADERS

Appearance:
1. INCOME TAX REFERENCE No. 32 of 1986
MR BB NAYAK FOR MR MR BHATT for Applicant.
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 12/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

At the instance of the revenue, the following questions have been referred for the opinion of this Court in respect of the assessment years 1981-82 :-

(i) "Whether, the assessee was entitled to registration under section 185 of the Income-tax Act,1961 as claimed, on the facts and in the circumstances of the case for assessment year in question ?"

(ii) "Whether, the status of the assessee for assessment year in question, was required to be taken , as that of the R.F.,and not as A.O.P.?"

2 The Income-tax Officer rejected the application for registration of the assessee as a Firm under section 185 of the Income-tax Act (hereinafter referred to as 'the Act'), on the ground that upon reconstitution of the Firm, a partner represented the Firm in two different capacities, one as individual and second as a representative of an HUF. The assessment was accordingly framed by treating the assessee as an association of the persons. The C.I.T.(Appeals) reversed that view on the basis of the decision of this Court in C.I.T. vs. Budhalal Amulakhdas, 129 I.T.R. 97. The Tribunal confirmed the view of the C.I.T.(Appeals). Hence, this Reference at the instance of the Revenue.

3 We have heard Mr.B.B.Nayak, learned Advocate for the Revenue, though served none appears for the respondent.

In Budhalal Amulakhdas (supra) while holding that one of the partners can have two capacities, one in his individual capacity and another as Karta of HUF, this Court relied on the decision of Kerala High Court in C.I.T. vs.Kandath Motors (1979) 120 I.T.R.644. The revenue carried the matter in the Supreme Court, the appeal has been dismissed by the Supreme Court in 224 I.T.R.663. In view of the aforesaid decision which confirms the principle laid down by the Kerala High Court and which was followed by this Court in 129 I.T.R. 644, the question will have to be answered in favour of the assessee and against the revenue.

4 Accordingly, we hold that the assessee was entitled to registration under section 185 of the Act as claimed for the assessment year in question and also that

status of the assessee for the assessment year in question was required to be taken as that of a registered firm and not as an association.

5 We accordingly answer both the questions in the affirmative i.e. in favour of the assessee and against the revenue.

6 The Reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah, J) (D.A.Mehta,J)

m.m.bhatt